



United States Sentencing Commission
October 2021

GOVERNMENT
EXHIBIT

FEDERAL SENTENCING OF **CHILD PORNOGRAPHY** **PRODUCTION OFFENSES**



Key Findings

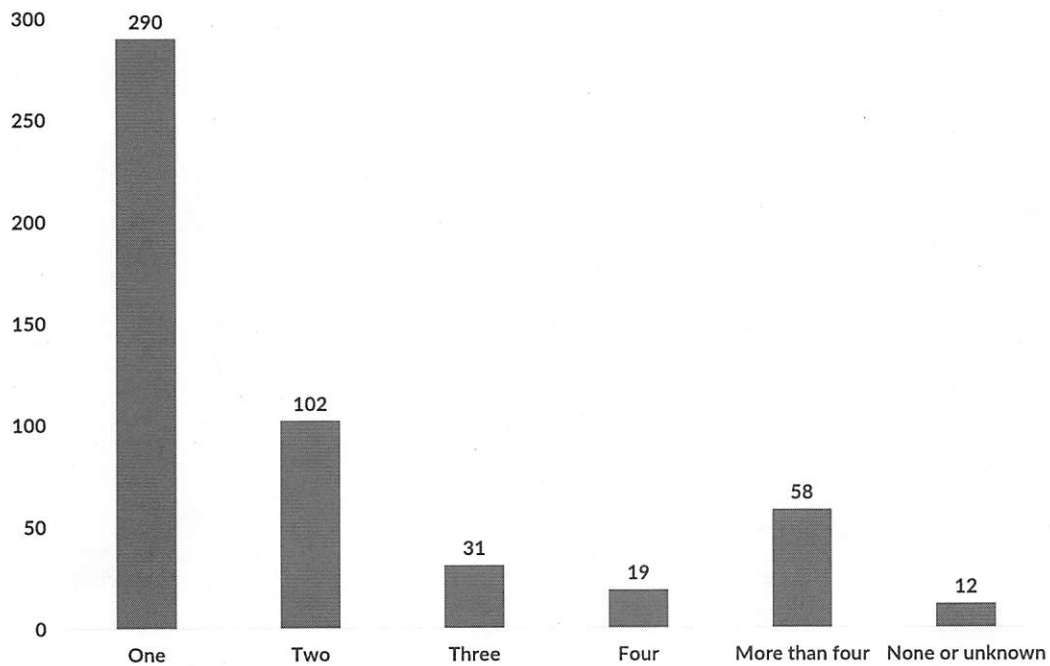


1 Although child pornography production cases comprise a small percentage of the overall federal caseload, the expansion of digital and mobile technology has contributed to a 422 percent increase in the number of production offenders sentenced over a 15-year period, from 98 offenders in fiscal year 2005 to 512 offenders in fiscal year 2019.



2 Child pornography production offenders generally received lengthy sentences. In fiscal year 2019, production offenders received an average sentence of almost 23 years (275 months), ranging from one year to life imprisonment. Furthermore, over three-quarters (78.0%) were convicted under a statute carrying at least a 15-year mandatory minimum penalty. A majority of child pornography production offenders, however, received a variance below the applicable guideline range (57.2% of the 512 cases).

Figure 10. Number of Victims in Child Pornography Production Offenses
Fiscal Year 2019

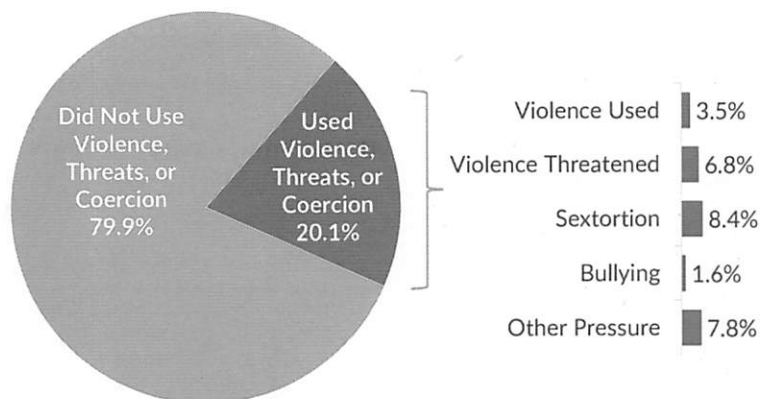


Number of Victims

The number of child pornography production victims involved in a single offense in fiscal year 2019 ranged from one to 440.⁴⁰ A majority (56.6%; n=290) of child pornography production cases involved a

single victim. However, a substantial minority (41.0%; n=210) had more than one minor victim (Figure 10).

Figure 22. Coercion Used by §2G2.1 Offenders
Fiscal Year 2019



Coercion

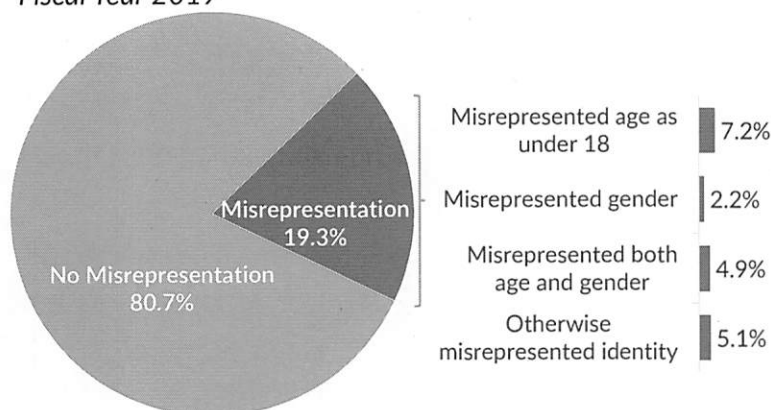
The Commission also examined whether the offender used any coercion—violence, threats, bullying, or other pressure—to induce the minor victim to participate in the child pornography offense. In fiscal year 2019, one-in-five (20.1%; n=103) child pornography production offenders coerced a minor victim in some fashion to participate in the offense (Figure 22). Of the offenders who engaged in coercive behaviors, roughly two-thirds used only one coercive approach (64.1%; n=66); more than one-third (35.9%; n=37) used more than one of these coercive tactics against a minor victim.

The most commonly used type of coercion is known as “sextortion.” It involves coercing a minor by using, or threatening to use, images or videos previously obtained to demand that the minor engage in a sexual act with the offender or to demand additional images or

videos that are sexual in nature. Sextortion can take many forms, including making threats to harm family or friends unless the victim complies with demands, hacking to gain access or control of the computer’s webcam to obtain images and videos, or leading the victim to believe the perpetrator can be trusted.⁴⁶ In fiscal year 2019, roughly eight percent (8.4%) of offenders engaged in sextortion by threatening to share or actually sharing images of the minor child with their peers, family members, friends, and even their teachers.

Approximately ten percent of child pornography production offenders either used violence (3.5%) or threatened violence (6.8%) against a minor. Fewer offenders (1.6%) engaged in another form of bullying to coerce a minor victim.⁴⁷ Additionally, 7.8 percent of the offenders used other forms of pressure against a minor victim, such as threatening to take away television privileges, to secure the child’s cooperation with the offender’s demands.

Figure 23. Offender Misrepresentation of Identity
Fiscal Year 2019



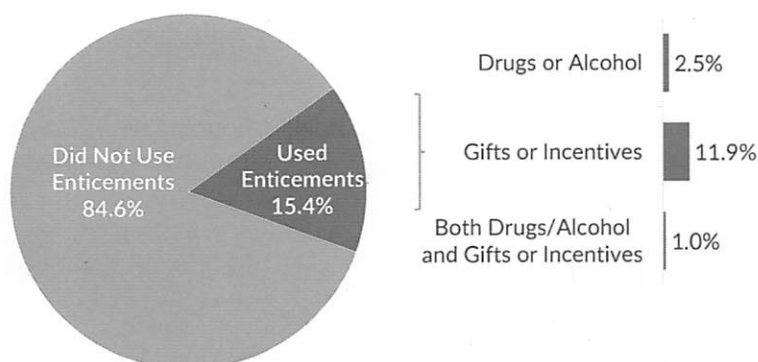
Misrepresentation

The increased use of the internet and remote technologies allows offenders to contact their victims on platforms where they can easily disguise their real identities. In fiscal year 2019, approximately one-fifth (19.3%) of child pornography production offenders misrepresented their identity in some manner to lure victims into participating in the production offense (Figure 23). Offenders misrepresented their age (7.2%), gender (2.2%), both their age and gender (4.9%), or another aspect of their identity (5.1%). Among production offenders who otherwise misrepresented their identity, they represented themselves as talent scouts, photographers, modeling agents, or employers. Most child pornography production offenders who misrepresented their identity initially met their victim remotely (e.g., via the internet).

Enticement

Child pornography production offenders used various forms of enticement to induce victims to participate in the offense. Of the 512 child pornography production offenders sentenced in fiscal year 2019, 15.4 percent offered minor victims enticements in the form of drugs, alcohol, gifts, or other incentives to encourage them to participate in the production of child pornography (Figure 24). Gifts or incentives (11.9%) were the most common enticements and included items such as smartphones, phone cards, and in-app purchases in an online game—items which helped facilitate both the offender's communication with the minor victim and the production of child pornography. Fewer offenders used drugs or alcohol (2.5%) or both gifts and drugs and alcohol (1.0%) as an enticement.

Figure 24. Enticement Used by §2G2.1 Offenders
Fiscal Year 2019



Sentencing Outcomes

Chapter

4

Incapacitation, Coercion, Enticement, or Misrepresentation

Section 2G2.1 provides a 2-level enhancement if an offender misrepresents their identity to commit the offense.⁵⁴ Offenders who misrepresented themselves to a minor victim received longer average sentences (288 months) compared to offenders who did not use any aggravating form of manipulation or coercion (266 months) (Table 11).

The Commission also examined how courts sentenced offenders who engaged in coercive or manipulative conduct not specifically accounted for in §2G2.1 to secure a minor victim's participation to produce child pornography. Child pornography production offenders who incapacitated or coerced victims received longer average sentences, compared to offenders who used other means of enticement or did not engage in those behaviors (Table 11). Child pornography production offenders

who incapacitated a minor victim using drugs or alcohol received an average sentence of 313 months. Offenders who used coercive tactics such as violence, sextortion, threats, or bullying were sentenced to an average of 291 months, which is more than two years longer than the average sentence for offenders who did not engage in these behaviors (266 months).

Courts also appear to consider whether offenders used other enticements, such as gifts, when imposing sentences on child pornography production offenders. Offenders who provided these enticements were sentenced to an average of 277 months, which is 11 months longer than offenders who did not use any misrepresentation or coercion to commit the child pornography production offense.

Table 11. Incapacitation, Coercion, Misrepresentation, or Enticement and Sentence Length
Fiscal Year 2019

Type of Inducement	N	Mean Sentence
Total §2G2.1 Offenders	512	275
Incapacitation	23	313
Coercion	103	291
Misrepresentation	99	288
Enticement	79	277
None	307	266